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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

List of issues in relation to the initial report of South Africa*

A. Purpose and general obligations (arts. 1–4)

1. Please describe the efforts made by the State party to ensure that the concept of disability is fully in line with the human rights model of disability, as set out in the Convention, in all legislation and policies and especially in the White Paper on an Integrated National Disability Strategy, as well as in areas such as employment equity, social security, the built environment and civil aviation.

2. Please provide information about:

(a) Progress made in incorporating the Convention into domestic law and to what extent persons with disabilities can invoke its provisions in court proceedings;

(b) Measures taken to consult with and effectively involve persons with disabilities, particularly women, children, persons with psychosocial and/or intellectual disabilities and persons living in institutions and in rural areas, through their representative organizations, in national decision-making processes, including those relating to matters that specifically affect them;

(c) Measures taken to strengthen the organizations of persons with disabilities, including through funding, accessible information and appropriate methodologies to enable them to address their internal affairs in a comprehensive manner and participate effectively in the development and implementation of legislation and policies.

B. Specific rights

Equality and non-discrimination (art. 5)

3. Please provide information about:

(a) Measures taken by the State party to prevent and address multiple and intersectional discrimination faced by persons with disabilities, particularly women and girls with disabilities, persons with psychosocial and/or intellectual disabilities, persons with disabilities who are members of minority communities or of indigenous peoples, also called native Africans, and persons with albinism, and indicate whether and how the State party's legislation and public policies take account of their needs;

(b) Measures to ensure that the State party's anti-discrimination legislation applies to all persons with disabilities, including persons with intellectual and/or psychosocial disabilities, and to prevent discrimination against persons with disabilities by

* Adopted by the pre-sessional working group at its ninth session (12–16 March 2018).

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private actors, including within families, especially measures to combat cultural practices that discriminate against persons with disabilities;

(c) Measures taken to extend the application of reasonable accommodation across all sectors, and ensure that reasonable accommodation is provided by public and private actors in relation to all the rights of persons with disabilities. Please also indicate whether the denial of reasonable accommodation is defined as a form of discrimination on the basis of disability and prohibited under domestic law;

(d) Measures taken to implement chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000;

(e) Reported violations of the rights of persons with disabilities, particularly of discrimination on the grounds of non-application of reasonable accommodation, and statistics on the number of investigations conducted, sanctions imposed and/or remedies provided to victims, particularly women and girls with disabilities, who have been affected by multiple and or intersectional forms of discrimination;

(f) Measures taken to eliminate barriers that hinder access by persons with disabilities to equality courts and remedies provided in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. Please also provide information about the number and percentage of complaints brought before the South African Human Rights Commission at the provincial level in the past three years, the investigations conducted, the sanctions imposed and the percentage of complaints dismissed.

Women with disabilities (art. 6)

4. Please provide information about:

(a) Measures taken to empower women and girls with disabilities as rights holders and to mainstream their rights in gender equality policies and strategies and in policies aimed at combating violence, including sexual violence, discrimination, exploitation and abuse against women;

(b) Measures, including affirmative action measures, aimed at addressing multiple and intersecting forms of discrimination against black women and girls with disabilities, including discrimination arising from traditional and cultural practices;

(c) Procedures at the national, provincial and local levels for consulting representative organizations of women and girls with disabilities and including them in decision-making processes concerning matters that directly affect them.

5. In line with target 5.2 of the Sustainable Development Goals, on the elimination of all forms of violence against women and girls with disabilities in the public and private spheres, including trafficking and sexual and other forms of exploitation, please:

(a) Provide data and information on gender-based violence against women and girls with disabilities and any programmes such as accessible community-based services for women with disabilities who have experienced gender-based violence, designed to protect women and girls with disabilities, particularly women and girls with psychosocial and/or intellectual disabilities, against all forms of violence and provide them with the necessary support;

(b) Describe the composition of the Commission on Gender Equality and provide information on steps taken to adopt legislation on combating violence against women and girls with disabilities that includes a disability perspective in the definition of violence and addresses the specific barriers faced by women and girls with disabilities, particularly those with psychosocial and/or intellectual disabilities, in gaining access to justice.

Children with disabilities (art. 7)

6. Please provide information about:

(a) Measures taken to ensure that the opinions, voices and views of all children with disabilities are given due weight, proportionately with their age and maturity, on the

decision-making processes that affect them, including in the home and in judicial proceedings;

(b) Measures adopted to protect children with disabilities, especially autistic children and children with psychosocial and/or intellectual disabilities, from exclusion, violence, abuse, corporal punishment and neglect by teachers and peers, including action to prevent the use of derogatory language about students with disabilities travelling on public transport in poor and in rural areas;

(c) The representation of children with disabilities in the annual Children's Parliament and effective consultations with children with disabilities, through their representative organizations, on all matters, particularly with regard to education opportunities for children with disabilities.

Awareness-raising (art. 8)

7. Please inform the Committee about:

(a) The effectiveness of awareness-raising campaigns mounted by the Government concerning the rights of persons with disabilities and how inclusive these campaigns are of persons with disabilities and their representative organizations, especially in rural communities;

(b) Measures to prevent the incarceration of persons with disabilities in rural communities on the basis of negative attitudes, myths and superstitions about disability;

(c) Measures adopted to combat stereotypes, prejudices and harmful practices relating to persons with disabilities in all aspects of life, including measures adopted by the Government to integrate disability mainstreaming and human rights education into the school curriculum;

(d) The current status of the bill on the prevention and combating of hate crimes and hate speech and its applicability to persons with albinism.

8. Please state to what extent the media, particularly the electronic and print media, contribute to raising awareness about the rights and dignity of persons with disabilities and their capabilities and contribution to society.

Accessibility (art. 9)

9. Please provide information on:

(a) Any strategic comprehensive policy on accessibility, the inclusion in such a policy of persons with disabilities, through their representative organizations, the resources allocated to ensure access to buildings, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities, workplaces and tourist attractions, in both rural and urban areas, and the accessibility of information and communication technologies;

(b) The current status of the Integrated National Disability Strategy as regards the accessibility of information and communication technology;

(c) Progress made on implementing accessibility standards in schools, in particular the implementation and outcomes of the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment, 2010;

(d) Measures to enforce the National Building Regulations and Building Standards Act, 1977, and existing sanctions for failure to comply with accessibility standards.

Right to life (art. 10)

10. Please provide information about measures to prevent harmful practices and attacks against the personal integrity and life of persons with albinism and to investigate cases where persons with disabilities have been assaulted, kidnapped, mutilated or killed.

Situations of risk and humanitarian emergencies (art. 11)

11. Please provide information on measures taken to consult persons with disabilities, especially persons with psychosocial and/or intellectual disabilities and persons with disabilities living in rural areas, including refugees, and to include them in the implementation of the Disaster Management Act.

12. Please provide information on whether the State party is considering the adoption of a disaster risk reduction strategy that provides for accessibility and the inclusion of persons with disabilities, in all situations of risk, in line with the Sendai Framework for Disaster Risk Reduction 2015–2030.

Equal recognition before the law (art. 12)

13. Please provide information about:

(a) Measures to review and reform chapter VIII of the Mental Health Care Act, 2002, which provides for the establishment of curatorships for persons with "mental disabilities" or persons with "severe or profound mental disabilities";

(b) Measures to eliminate all discriminatory restrictions and practices that impinge on the legal capacity of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, to get married, make a will, enter into a contract, vote or make any decisions that affect their lives;

(c) Measures in place to facilitate the shift from substitute decision-making to supported decision-making, in line with the Committee's general comment No. 1 (2014) on equal recognition before the law, including measures to expedite the completion of the South African Law Reform Commission's proposed bill on supported decision-making;

(d) The existing remedies available to a person with disabilities who opposes a given guardianship decision and the number of persons with disabilities who have regained legal capacity since the State party's ratification of the Convention.

Access to justice (art. 13)

14. Please provide information on:

(a) Measures taken to provide persons with disabilities, in all areas of law and at all levels of judicial procedure, with information in accessible formats, such as Braille, Easy Read and sign language interpretation, and in different dialects, and to ensure the physical accessibility of courts, including all "special" and "periodic" courts;

(b) The current status of the rules concerning children with disabilities, including children with intellectual and/or psychosocial disabilities, in court proceedings, as provided for in the Children's Act 2005, and the progress made on providing access to justice for children with disabilities in children's courts;

(c) Measures taken to implement procedural accommodations and gender- and age-appropriate accommodation in judicial proceedings, especially for black women and girls with disabilities and for deaf, deaf-blind and hard-of-hearing persons;

(d) Measures taken to ensure access to justice for persons with albinism and the prompt prosecution and the conviction of perpetrators of offences against such persons, in particular where the victims are women or children;

(e) Assessments carried out of the training provided for the South African Police Services on the rights of persons with disabilities;

(f) The availability of training to enable persons with disabilities to participate in the judicial system as lawyers, judges or law enforcement personnel.

Liberty and security of the person (art. 14)

15. Please provide information about:

(a) Measures to review and repeal the provisions of the Mental Health Care Act, 2002, allowing for involuntary "mental health care" based on impairment;

(b) Measures to review and amend the Older Persons Act, 2006, which provides for the institutionalization of older persons with disabilities on the basis of their impairment, in cases where it is considered that their "mental condition" renders them "incapable" of giving consent;

(c) The number of persons with disabilities subjected to medical interventions under substitute decision-making regimes without their free and informed consent;

(d) Measures to repeal legislation that allows for the institutionalization of older persons with disabilities on the basis of third-party applications.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

16. Please provide information about:

(a) Measures, in law and in practice, to ensure that persons with disabilities, including children with psychosocial and/or intellectual disabilities, are not subjected to torture or to cruel, inhuman or degrading treatment or punishment, including corporal punishment;

(b) The monitoring by the judiciary of torture in mental health or drug rehabilitation centres and all other institutions, including stimulation centres, special schools, hostels and residential institutions for older persons, and measures taken to ensure that Mental Health Review Boards work on the basis of a human rights approach to disability in dealing with any instances of violence and/or ill-treatment in mental health facilities;

(c) Measures taken to implement the recommendations of the Health Ombudsman in relation to the Life Esidimeni tragedy that resulted in the death of more than 144 persons with psychosocial disabilities, and to ensure that criminal charges are brought against the perpetrators;

(d) Complaint procedures and remedies available to persons with disabilities in institutions, together with disaggregated data on the investigation and prosecution of perpetrators of torture and ill-treatment and on disciplinary sanctions against them;

(e) The State party's intentions with regard to the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and progress made in the establishment of a national preventive mechanism with a mandate to monitor places of detention, including places where persons with disabilities are held.

Freedom from exploitation, violence and abuse (art. 16)

17. Please provide information about:

(a) Measures to prevent persons with disabilities, especially women, children and persons with psychosocial and/or intellectual disabilities, from suffering any form of exploitation, violence and abuse, including sexual violence and child pornography, in all settings, whether in the home or in institutions, and in both rural and urban areas;

(b) Access by women and girls with disabilities to the Thuthuzela Care Centres, which provide support services for survivors of sexual offences and domestic violence, and to programmes providing psychosocial redress and legal aid for women with disabilities who are exposed to gender-based violence;

(c) Measures taken to train police and prison officials, members of the judiciary, social workers, health professionals and other parties working with those experiencing violence, with a view to raising their awareness of the rights of persons with disabilities,

and measures to engage with persons with disabilities, especially persons with psychosocial and/or intellectual disabilities and mental health-care users;

(d) The current status of the Prevention and Combating of Trafficking in Persons Bill and the inclusion of disability as a factor of vulnerability in relation to trafficking in persons, and the impact of measures to fight poverty and support "indigent" persons with disabilities in addressing such matters as accessibility, living independently and being included in the community.

Protecting the integrity of the person (art. 17)

18. Please provide information about measures in place to protect the physical and mental integrity of persons with disabilities, especially persons with psychosocial and/or intellectual disabilities, regarding medical or other treatment without their prior, free and informed consent, including forced contraception, forced sterilization and the use of drugs to induce menstrual suppression.

Liberty of movement and nationality (art. 18)

19. Please provide information about measures taken to ensure that migrants, refugees and asylum seekers with disabilities have access to identity documents and are provided with support and access to education and health.

Living independently and being included in the community (art. 19)

20. Please provide information about:

(a) Measures that have been put in place to adopt a national framework for the closure of institutions and residential care facilities where persons with disabilities reside and to recognize their right to live independently and be included in the community, including the right to choose freely where and with whom they live, as a subjective right;

(b) The number of persons with disabilities living in institutions, including institutions providing mental health care, care for older persons and drug rehabilitation;

(c) Measures to provide redress for persons with disabilities who were affected by the Esidimeni tragedy, in particular in the form of compensation, psychosocial assistance and rehabilitation;

(d) Measures, including public policies, strategies and programmes with the resources to establish and develop community support services, including personal assistance, for persons with disabilities at the national, provincial and local level, including in rural areas;

(e) Measures adopted to ensure that mainstream community services and facilities, including housing, schools, parks, banks and health facilities, are accessible and available for persons with disabilities, irrespective of their impairment, age and place of residence.

Personal mobility (art. 20)

21. Please indicate what measures are in place to support the personal mobility of persons with disabilities, especially children with disabilities, and what measures have been adopted by the South African Disability Development Trust to provide mobility aids and appliances for persons with disabilities requiring them.

Freedom of expression and opinion, and access to information (art. 21)

22. Please provide updated information on the development of a Braille production strategy and on progress in recognizing South African Sign Language as an official language in the State party. Please also provide information on the processes followed by the State party when procuring the services of sign language interpreters.

23. Please provide information about measures undertaken to make information available for persons with disabilities in accessible formats, such as Braille, Easy Read and sign language, including on the Internet.

Respect for privacy (art. 22)

24. Please provide information about measures adopted to ensure that service providers and any other person providing support to persons with disabilities are aware of and properly trained in the right of persons with disabilities to private and family life. Please also provide information about measures to protect the personal data and records of persons with disabilities from unlawful and arbitrary interference, including data and records concerning judicial proceedings in which they take part.

Respect for home and the family (art. 23)

25. Please provide information about:

(a) Strategies and programmes implemented to provide persons with disabilities, including those living in rural communities, with accessible and age-appropriate information and reproductive and family planning education in accessible formats;

(b) The progress made in the adoption and implementation of the strategy to provide children with disabilities with alternative care in the community and in a family setting;

(c) Measures adopted to prevent the separation of a child from his or her parents on the basis of the disability of either the child or one or both of the parents.

Education (art. 24)

26. Please provide information about:

(a) Measures adopted by the State party with a view to recognizing the enforceable right to inclusive education and providing inclusive and high-quality education for children and adults with disabilities, including deaf and hard-of-hearing persons, at the national, provincial and local levels;

(b) Measures adopted to ensure the provision of the right to reasonable accommodation in education, to establish guidelines for schools, to make budget allocations for public schools to that end, to provide support for the families of children with disabilities and to ensure the development of teacher training programmes on inclusive education and methodologies;

(c) The number of cases of discrimination against children with disabilities in schools and the measures taken to ensure that children with disabilities currently out of education are enrolled in school, that they are treated with dignity and respect and that they are not denied admission to a school on account of their impairment.

Health (art. 25)

27. Please provide information about:

(a) The physical accessibility of health facilities for persons with disabilities and the availability of information in accessible formats, such as Braille, sign language and Easy Read, for persons who are blind or visually impaired or deaf and hard of hearing or who have psychosocial and/or intellectual disabilities;

(b) Measures in place to ensure that persons with disabilities enjoy their rights to sexual and reproductive health and to give their free and informed consent on health matters, including HIV/AIDS;

(c) Measures taken to provide training for health professionals and support personnel in order to enable them to understand the human rights-based approach to disability and avoid discriminatory and negative attitudes against persons with disabilities, particularly persons with psychosocial and/or intellectual disabilities, and to establish an

effective appeal and reporting mechanism in the health sector when clients' rights have been infringed.

Work and employment (art. 27)

28. In the light of the declining rate of employment of persons with disabilities in the public sector, please provide information on measures taken to provide employment for persons with disabilities, especially women with disabilities, and to increase awareness of the rights of persons with disabilities in relation to work.

29. Please provide information about measures aimed at creating employment for persons with psychosocial and/or intellectual disabilities, including affirmative action measures and vocational training for persons with disabilities, and at providing persons with disabilities with reasonable accommodation in the workplace and imposing sanctions on non-compliant entities or those who have deliberately failed to employ persons with disabilities.

Adequate standard of living and social protection (art. 28)

30. Please provide information about:

(a) Measures taken to ensure that all persons with disabilities receive disability grants, in particular persons with disabilities living in poverty, families of children with disabilities, older persons with disabilities, persons with disabilities in rural areas and persons with disabilities who are out of work. Please also indicate the level of accessible information and the measures taken to raise awareness among persons with disabilities about the existence and availability of these grants;

(b) Any reports on the implementation and outcomes of the National Development Plan (2012) and its practical effect on improving the living conditions of all persons with disabilities;

(c) Measures to ensure that persons with disabilities have access to food security programmes, sanitation, clean water and accessible housing.

Participation in political and public life (art. 29)

31. Please describe specific measures in place to maintain and increase the representation of persons with disabilities in Parliament, the provincial legislatures and local government. Please also provide information about measures to improve the physical accessibility of voting centres, particularly in rural areas, and measures to ensure the right of persons with psychosocial and/or intellectual disabilities to participate in elections. Please also indicate the availability of information in accessible formats, such as Braille, sign language and Easy Read.

Participation in cultural life, recreation, leisure and sport (art. 30)

32. Please provide information on measures taken towards the ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

33. Please provide information on measures adopted to ensure that persons with disabilities have equal access to community life and to cultural, social and sporting activities.

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

34. Please indicate what measures have been put in place to engage with persons with disabilities, through their representative organizations, in the design of data-collection systems and methodologies. Please also provide information on the State party's use of the

Washington Group Set of Questions on Disability in its statistical data-collection policy and programmes, including censuses and household surveys.

International cooperation (art. 32)

35. Please indicate measures taken to involve persons with disabilities and their representative organizations in the design and implementation of international cooperation agreements, particularly those relating to the Sustainable Development Goals.

National implementation and monitoring (art. 33)

36. Please provide information about the role of the Department of Social Development with regard to the focal points to be designated under article 33 (1) of the Convention and comment on the role of other focal points within the Government.

37. Please provide information on measures aimed at establishing an independent monitoring mechanism, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor the implementation of the Convention and to ensure the full and effective participation of persons with disabilities and their representative organizations within such a framework.